United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

76-2137

Docket No. 76-2137

To be Argued By:
RAPHAEL F. SCOTTO
10 Minutes

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

PAUL FLAMMIA

Petitioner-Appellant

- against-

UNITED STATES OF AMERICA

Respondent

APPENDIX AND BRIEF FOR PETITIONER-APPELLANT

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TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS

ISSUE

WAS THE FAILURE OF MR. FLAMMIA'S ASSIGNED COUNSEL TO ADVISE THE PETITIONER THAT HE COULD APPEAL THE SENTENCE OF THE EASTERN DISTRICT COURT INADEQUATE REPRESENTATION WHICH FRUSTRATED THE PETITIONER'S RIGHT TO APPEAL?

STATEMENT OF CASE

This an appeal of a ruling by Judge Thomas C. Platt of the United States District Court, Eastern District, which denied a motion by the defendant, Paul Flammia, to vacate, set aside or correct a sentence of Judge Platt pursuant to Title 28 U.S.C. §2255 (R.83). Embodied in that motion was a contention by Mr. Flammia that he had been ill advised by Mr. John Corbett, his co-defendant's attorney, that he could not appeal the sentence of the Court after he had pled guilty. Furthermore, Mr. Flammia's counsel, Mr. George Scheinberg, did not correct the mistake of Mr. Corbett and never told Mr. Flammia that he did, in fact have a right to appeal the sentence (2255 Motion P. III). As a result of counsel's ill-advice and inadequate representation, Mr. Flammia lost his right to appeal because no notice had been filed within 10 days of the judgment of conviction as required by Rule 4(b) of the Federal Rules of Appellate Procedure (2255 Motion P. III). The pro se motion of Mr. Flammia to appeal belatedly was, as indicated above, denied by Judge Platt after a hearing held on October 8, 1976 (R. 83).

STATEMENT OF FACTS

On November 21, 1976 Mr. Flammia was sentenced by Judge Platt of the Eastern District of New York to a term of six (6) years, as a result of the defendant's plea of guilty on September 23, 1976 to Count One of Indictment #75CR275 (use of a firearm in the commission of a felony-theft of goods from a motortruck in interstate commerce) in violation of 18 U.S.C. §924(c)(1)(2). This sentence was to run consecutively with a state sentence of 14 years imposed by Justice Gordan Lipitz on July 25, 1972 as a result of Mr. Flammia's being found guilty by a jury in the Suffolk County Supreme Court (2255 Motion P. I).

After receiving the District Court's consecutive sentence, the co-defendants, Mr. Collins and Mr. Peters, were also sentenced to similar terms. The three defendants were then taken to the pens adjacent to the Courtroom where they were joined by their respective counsels (R 9, 10). Mr. Flammia, who had a limited ability to read and understand (R 62) had a discussion with his brother-in-law, Collins, about Judge Platt's references to different details during the trial

of other co-defendants (R. 61). At this point, Mr. Flammia, ignorant of legal remedies (R. 63) relying on Mr. Collins to express his thoughts (R. 62), overheard a conversation between Mr. Corbett and Mr. Collins about the sentencing. Messrs. Flammia and Collins both indicated that Mr. Corbett flatly stated, in response to their request to appeal the sentence, that they could not appeal a sentence after the plea of guilty (R. 63). Mr. Corbett did mention a motion for reduction in response to Collins's and Flammia's complaints about Judge Platt's reliance on exigent factors ("gory details") in the sentencing (R. 12). All the defendants expressed discontent with the sentencing and the manner in which it was imposed. Their complaints were registered for all to hear, and then individually to each attorney (R. 50).

Mr. Flammia further discussed with his attorney, the defendant's ill health and the possibility of his dying in prison (R. 69,70). Mr. Flammia told his attorney that he wanted the sentence reduced. Despite Flammia's protestations, there was no indication at any time from Mr. Scheinberg that the defendant could appeal the sentence (R. 71).

None of the attorneys, despite the continuous discussion of the sentence within a small area, ever suggested or mentioned that the defendants had a right to appeal the sentence. Mr. Flammia, through his brother-in-law, did file a motion for reduction pursuant to Rule 35 of the Federal Rules of Criminal Procedure, which was denied, as were those of his co-defendants (2255 Motion P. III). No notice of appeal was ever filed by Mr. Flammia's attorney and as a result of his ill advice, Mr. Flammia did not file a timely notice. As noted above, a motion to vacate the sentence to appeal belatedly was made and denied after a hearing. Wherein, a notice to appeal that decision to this Court was timely filed and perfected.

ARGUMENT

Point I

The Petitioner, Paul Flammia, Had The Right To Appeal His Sentence Imposed By The Eastern District Court After His Plea Of Guilty

An appeal from a judgment of conviction in the Federal Courts is a matter of right. In Coppedge v. United

States, 369 U.S. 438, 82 S.Ct. 787, 8L. Ed.2d 809 (1962), the Supreme Court held:

> Present federal law had made an appeal from a District Court's judgment of conviction in a criminal case what it, in effect, a matter of right. That is, a defendant has a right to have his conviction reviewed by a Court of Appeals, and need not petition that court for an exercise of its discretion to allow him to bring the case before the court. The only requirements a defendant must meet for perfecting his appeal are those expressed as time limitations within which various procedural steps must be completed. 369 U.S. at 441-442.

It is acknowledged that Mr. Flammia in the instant case pled guilty to a charge under Indictment #75CR275. His plea, however, does not foreclose him from an appeal of the judgment of that conviction. It is true that in the past, Federal Appellate Courts have eschewed review of sentences that are within statutory limits. United States v. Sweig, 454 F.2d 181 (2d Cir. 1972); United States v. Rosenberg, 195 F.2d 583 (2d. Cir. 1952), cert. denied, 344 U.S. 838 (1953). However, the recent cases in this Circuit have

distinguished between the review of length of sentences and the review of factors considered in arriving at a particular sentence. United States v. Driscoll, 496 F.2d 252 (2nd Cir. 1974); United States v. Holder, 412 F.2d 212 (2d. Cir. 1969). In Holder, supra., the criteria for review of a district court sentence is noted:

> "If the sentence could be characterized as so manifest an abuse of discretion as to violate traditional concepts, it is possible that we might, pursuant to our power to supervise the administration of justice in the circuit, overturn our long established precedents of non-intervention and intervene." 412 F.2d at 215.

Specifically, Mr. Flammia objects that his sentence was predicated on testimony adduced on the trial of a co-defendant who had not pled guilty; that he should have been sentenced prior to that trial; and that the sentencing Judge, Judge Platt, considered evidence in that trial that was outside of the scope of the plea that Mr. Flammia had taken in satisfaction of the indictment. (2255 Motion P. II). While these contentions are important, it must be noted that Mr. Flammia is under no burden to show a non-frivilous appellate

issue to garner the relief he seeks in this appeal. Rodriguez v. United States, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969).

POINT II

The Failure Of Mr. Flammia's Counsel To File A Timely Notice Of Appeal, Or To Inform Mr. Flammia Of That Right, In View Of All The Facts, Amounted To Ineffective Assistance Of Counsel

The period between the date of sentence and the expiration of time allowed for appeal is a critical stage of criminal proceedings, and the defendant's constitutional right to counsel covers that period. 18 U.S.C. §3006 A(c); Williams v. United States, 402 F.2d 548 (8th Cir. 1969); United States v. Neff, 525 F.2d 361 (8th Cir. 1975).

The common standard applied to determine ineffectiveness of counsel, i.e. "conduct such as to shock the conscience of the court and make the proceedings a farce and a mockery of justice," does not control on the issue of whether an appeal has been frustrated. United States ex rel. Randazzo v. Follette, 444 F.2d 625 (2d. Cir. 1971) cert.

denied, 404 U.S. 916 (1971). In Randazzo, supra, the Court stated:

> While counsel may not need to consult with his client on all tactical aspects of an appeal, clearly the client should be informed that counsel has decided to abandon the case so that a client may find alternative means of representation. 444 F.2d at 629.

The record of the instant case clearly indicates that Mr. Flammia's counsel never told Mr. Flammia that he could have appealed the sentence (R. 70,71). The defendant's complaints about how his sentence was imposed, and its traumatic effect because of his physical problems were discussed (R. 69, 12 50). Surely there was a burden imposed on counsel to at least notify Mr. Flammia of his right to appeal, even if counsel felt it a frivolous appeal. If such were the case, counsel could have followed the procedure of Anders v. California 386 U.S. 738 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), and indicated to both the defendant and the court his professional opinion. Doing such, would have at least alerted Mr. Flammia that he had such a right.

It is respectfully suggested to this Court, despite

the findings of Judge Platt, that as a result of the discussions with counsel for Mr. Flammia and the other attorneys present, Mr. Flammia was under the impression that he had no right to appeal (R. 62,63). There has been some proof adduced that Mr. Flammia knew of his right to appeal prior to sentencing (R. 25, 65). There has also been proof that Paul Flammia was barely literate, and relied on Mr. Collins regarding legal procedures (R. 62, 63). It is submitted that Mr. Flammia and his co-defendants processed many pro se motions in this matter. The fact that an appeal was not filed, but rather a motion for reduction pursuant to Rule 35 of the Federal Rules of Criminal Procedure lends credibility to Mr. Flammia's charge that he was told that he could not appeal and could only file a Rule 35 motion. Indeed counsel's failure to affirmatively state that Mr. Flammia could appeal amounted to ineffective assistance.

Recent criminal decisions have established that failure of counsel to take the simple step of filing a notice of appeal, when requested by his client to do so, constitutes ineffective assistance of counsel. Swenson v. Bosler, 386

U.S. 258, 87 S.Ct. 996, 18 L.Ed.2d 33 (1967); Douglas v. People of California 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963); Williams v. United States, supra. Judge Platt has credited the testimony of the prior attorneys of Messrs. Flammia, Collins and Peters concerning whether or not an appeal of sentence was requested. However, this Court is urged to credit Mr. Flammia's protestations of ill health and his desire to reduce the sentence (R. 70) as implied requests for appellate relief. To hold that such inquiries only required advice regarding a Rule 35 motion would not serve the interests of justice.

Certainly, Mr. Flammia is not an attorney and his request to reduce Judge Platt's sentence should not be so narrowly construed and interpreted as a request for only Rule 35 relief. Common sense indicates that Flammia's plea was for whatever relief was available. It is suggested that Flammia's request should be interpreted by this Court as one of a layman who is seeking the aid of his attorney. In doing so, the holdings of Swenson, supra., Douglas, supra and Williams, supra. would mandate counsel to at least inform

the petitioner of his right to appeal.

If this Court does not accept that there was a direct or implied request for an appeal of the sentence, it is urged that the Court adapt the finding of Dillane v. United States, 350 F.2d 732 (District of Columbia Cir. 1965). The Court therein stated:

> In the record before us there appears to be allegations that appellant's counsel, retained for his defense at the trial, never appraised him of his right to file a notice of appeal, or of the time within which that right must be exercised. If true, and if unexplained, this impresses us as such an extraordinary inattention to a client's interest as to amount to ineffective assistance of counsel cognizable under Section 2255. 350 F.2d at 733.

Judge Platt did afford Mr. Flammia with a hearing to determine the facts as ordered by Dillane. The hearing established that Mr. Flammia was never advised of his right to appeal. It is suggested that such failure is completely unexplained in light of the protestations regarding the sentence that were forthcoming from Mr. Flammia and his co-defendants. Therefore, notwithstanding Judge Platt's

finding that Mr. Flammia never directly requested an appeal, there was still a burden on Mr. Flammia's counsel to advise him that he could appeal. Dillane v. United States, supra.

The appellant would analogize his present situation with two other cases outside of this Circuit wherein a review of all of the facts and circumstances indicated that the defendants had not been provided with adequate assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution.

In Herring v. Estelle, 491 F.2d 125 (5th Cir. 1974) the court expounded on the duty of an attorney in representing his client.

> It is his job to provide the accused an understanding of the law in relation to the facts.....His advice should permit the accused to make an informed and conscious choice... And a lawyer who is not familiar with the facts and law relevant to his client's case, cannot meet that required minimum level.

In Herring, the relevant facts were that the defendant had assaulted a jailer and had taken the jail keys to escape. The keys were left in the door when he escaped.

The maximum penalty for said assault and escape was 7 years. The defendant pled guilty to the crime of robbery, i.e. forcibly stealing the keys, and received a sentence of 25 years. The attorney who advised the defendant to take the plea was assigned on the same day as the plea was taken. The defendant appealed because of ineffective assistance of counsel. The Court in reversing and remanding the case stated:

> Since Herring left the keys in the jail door, one can make a strong argument that he conclusively demonstrated his intent not to keep them permanently...By failing to advise Herring how the facts of the case related to the Texas law of robbery, counsel made certain that his client's plea could not be knowingly and voluntarily entered. 491 F.2d at 129.

The Court felt that the facts of Herring required the defendant's attorney to recognize the obvious argument they fostered. He then had the burden to advise the defendant to plead not guilty or at the very least, explain the operative Texas statute about what constituted robbery. Herring v. Estelle, supra. at 129.

Analogously, the Appell

Analogously, the appellant, Mr. Flammia expressed his discontent with the Judge's sentence for reasons alluded to above. It seems evident that the failure of Flammia's counsel to mention the right to appeal reflected the failure of counsel to provide the petitioner with an understanding of the facts in relation to the law. The opportunity to appeal in the instant case seems as obvious a conclusion as the argument pointed out by the Herring Court. Therefore, there should be similar relief to that rendered in Herring.

Another analogous matter is Harris v. Towers, 405 F. Supp. 497 (D. Del. 1974). Therein, the District Court held that a defendant convicted of forcible rape in state court had been denied effective assistance of counsel. The Court based its decision on the attorney's failure to investigage the reputation of the prosecutrix, after receiving evidence tending to show that the prosecutrix had had prior sexual relations, and that sperm found in the vagina of the prosecutrix only several hours after the alleged intercourse were non-motile. The latter inferred that, either the sperm had been deposited a substantial time before, or that it had been placed there by a sterile man (the defendant was 32

years old and had 4 children). Harris v. Towers, supra. at 491,504.

The court held that although the attorney did pursue the defense of lack of evidence of force competently, his failure to investigate reputation and the dead sperm issues rendered his assistance in that case ineffective. Harris v. Towers, supra. at 505.

Again, the argument uttered to this learned Court is that Mr. Flammia's statements and inquires regarding his sentence compelled his attorney to advise him that he had the right to appeal just as the facts of Harris compelled the defendant's attorney to pursue the different defenses afforded him. Both are equal deprivations of a defendant's right to counsel under the Sixth Amendment.

The record of this case is clear that on November 21, 1975, after the defendant Flammia was sentenced, within a few feet of each other in the District Court holding pens, at least 6 people were discussing the alleged improprieties of a sentence that was just imposed. (R. 69). Despite the protestations of Mr. Flammia and the other co-defendants present, Mr. Flammia's attorney did not even mention that

the defendant could appeal.

It is submitted that the totality of the facts in the instant case required effective counsel to tell Mr. Flammia that he did have a right to appeal. The failure to do so frustrated the defendant's right to appeal and deprived him of his right, during a critical stage of a criminal proceeding, to effective assistance of counsel. United States ex rel Thurmond v. Mancusi, 275 F.2d Supp. 508 (E.D.N.Y. 1967) Saunders v. Slayton, 348 F. Supp. 547 (W.D. Vir. 1972); United States v. Brierley, 276 F. Supp. 567 (E.D. Penn. 1967).

POINT III

CONCLUSION

It is respectfully requested, based on the law cited and the interests of justice, that appellant Flammia be remanded to the District Court for re-sentencing and thereby be afforded his right to appeal from that judgment of conviction.

Dated: Brooklyn, N.Y.
December 15, 1976

Respectfully submitted

RAPHAEL F. SCOTTO
Attorney for Petitioner-Appellant
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875-6109

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PAUL FLAMMIA Petitioner - against - UNITED STATES OF AMERICA Respondent	File No. 76C598

INDEX TO RECORD ON APPEAL

By Platt, J. - Memo and order dtd 10/29/76 that petitioner's letter dtd 10/13/76 be accepted and filed as atimely notice of appeal, that petitioner's application for copies of the record of the hearing is granted, motion to prosecute w/o the required fee is granted, the request for counsel is denied.	(7)
Civil appeal scheduling order filed	(8)
Letter dtd 10/13/76 to J. Platt from petitioner's filed. See 76C545	Included
Affidavit of U.S.A. in opposition to consolidation applications filed in 76C549	See File No. 76C549
Letter dtd 5/7/76 from G. Collins with petitioner's traverse filed in 76C545	See File No. 76C545
Letter dtd 5/3/76 to J. Platt from U.S. Atty/ EDNY filed in 76C545	See File No. 76C545
Petitioner's traverse filed in 76C545	See File No. 76C545
By Platt, J. - Memo and order dtd 8/16/76 that a hearing be held on 10/1/76 at 2:00 P.M. to determine the issues of fact. Ordered that Stephen Flammia is appointed to represent petitioner, Peters, Mark A.Landsman is appointed to represent petitioner Collins and	

Raphael F. Scotto is appointed to represent petitioner Flammia. Copies of this memo and order mailed to each of the petitioners, the U.S. Attorney for the Eastern District and to petitioners' newly and formerly appointed counsel. See 76C545

See File No. 76C545

By Platt,J. - Writ of Habeas Corpus ad testi-fivandum for Paul Flammia issued

See File Nos. 76C545 and 76C549

Stenographic transcript dated 10/8/76 filed in 76C545 (Note - transcript mailed to Court of Appeals).

Clerks Certificate

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

Respondent

- against -

Paul Flammia - N.Y.S. - 345

Petitioner

----------X

Notice of Motion
For Permission to
Appeal Belatedly

76C 398

Ind. No. 75 CR 275

To: Honorable Court

Petitioner, Paul Flammia, N.Y.S., 345, respectfully submits this petition for the following reasons:

Petitioner avers that he is presently confined in Fishkill Correctional Facility, W. & H., Building # 13, Beacon, New York, 12508 for a period of fourteen years as a result of a finding of "Guilty" in jury-trial before the Honorable Judge Gordon Lipitz, Suffolk County Court, New York on the 25th day of July 1972.

Under date of November 21, 1975 petitioner was sentenced in Federal District Court for the Eastern District of New York by the Honorable Judge Thomas Platt, Jr., to a term of six (6) years to run consecutively to the present State prison term petitioner is now serving. This consecutive sentence was predicated upon a conviction under Ind. No. 75 CR 275 by a plea of "Guilty" of the alleged offense "Possession of a Weapon". Petitioner was represented by Court-appointed counsel, Mr. George Sheinberg, Esq.

"Jurisdiction"

Jurisdiction in this proceeding is conferred upon the Honorable Court pursuant to the provisions of Title 28, U.S.C., 2255, Rule 3-(C)-(D).

Petitioner contends that he was denied the right to Appeal the six year consecutive sentence as imposed by the Honorable Jufge Platt, Jr., Eastern District of New York within the ten day time limit pursuant to Title 28, U.S.C., Sec. 602, due to the failure of the Court and petitioner's court-appointed counsel, Mr. George Sheinberg's failure to advise the petitioner of his lawful and constitutional right to Appeal and offers the below in support of his contention.

1. Upon the completion of sentencing, neither the Court, The Court Clerk or Defense Counsel advised your petitioner of his lawful and constitutional right to appeal within the prescribed time limit set by law.

2. Shortly after sentencing, petitioner and two co-defendants, Gerard Collins and Charles Peters were conversing with Counsel's Mr. Corbett and Mr. Sheinberg and Counsel Mr. Eugene Mastroperi (Counsel for two co-defendant's who elected to go to trial). Petitioner advised Counsel's to Appeal the consecutive six year sentence for the following reasons:

"A". Petitioner stated to Counsel's that the Trial Judge had no Aughority to predicate the six year consecutive sentence upon the evidence and/or testimony adduced at co-defendant's trial as the petitioner had "Plea-Bargained".

"B". Petitioner should have been sentenced prior to the commencement of taiâl of co-defendant's who had elected to go to trial rather than "Plea-Bargain".

"C". The sentencing Judge presiding at trial of co-defendant's had taken into his consideration and deliberation all of the trial testimony illicited at said trial by the prosecution's Major Wittness (Mr. Paul Fleisher, a co-conspirator but not a co-defendant).

Certain testimony was illicited from the prosecution wittness that could not be "Objected" to by your petitioner who elected to "Plea-Bargain" and not engage in trial.

This testimony, which amounted to a separate and distinct charge not included in Ind. No. 75 CR 275, was not "Objected" to at trial by Defense Counsel's for those who elected to go to trial, i.e., co-defendant's Mastrangelo and Addoloria.

This testimony, perforce, had effect upon the sentencing Court's determination herein and, thus, was prejudicial to petitioner and sentencing thereof.

Petitioner's counsel, Mr. Steinberg while in the company of your petitioner's co-defendant's Collins' and Peters and counsel Mr. Eugene Mastroperi was advised by co-defendant's Collins' counsel Mr. Corbett that:

> Petitioner's could "Not Appeal" the sentence as they had "Plea-Bargained", but could insert into the Court a "Motion for a Modification and/or Reduction in sentence within the prescribed one hundred one twenty day time limit prescribed by law".

Please Note: None of the afore-mentioned counsle's present at this time challanged Mr. Corbett's above statement which petitioner's construed to be fact.

Failure of the Court, The Court Clerk and/or Defense Counsel's to advise your petitioner of his lawful and constitutional right to Appeal sentencing denied your petitioner Due Process and Equal Protection of law.

Petitioner petitioned the Honorable Judge Thomas Platt, Jr., Eastern District Court, pursuant to Rule 35 of the Federal Rules of Procedure for a modification and/or reduction in sentence, citing disparity and severity in sentence as opposed to those co-defendant's who elected to go to trial and were found "Guilty" on all counts contained there-in. Petitioner is awaiting the outcome of Judge Platt's decision. However, petitioner's co-defendant's Collins' and Peters have been denied upon similiar Motion's to Justice Platt.

Petitioner has since become knowledgable that he did and does have a legal and constitutional right to appeal and shluld have been made aware of this right either through the Court and/or Counsel of record at sentencing.

Petitioner contends that the failure of the Court, The Court Clerk and Defense

Counsel to advise the petitioner of his legal and constitutional right to Appeal denied your petitioner Due Process and Equal Protection of law as enumerated in the Fourteenth Amendment of the United States Constitution.

Wherefore, petitioner prays this Honorable Court will in the interests of justice and constitutional rights grant him the right to appeal the sentencing and/or sentence out of time, in lieu of timely notice accordingly. Further, that the Court appoint counsel under the Criminal Justice Act to perfect said Appeal.

Respectfully submitted,

Paul Flammis

Paul Flammis - PRO-SE- 345
E. & H. Unit Bldg., 13
Fishkill Corr. Facility
Beacon, New York,
12508

State of New York:
County of Dutchess:
Sworn to before me

This 22 Day of Mar. 1976

Albert C. Holme

Notary Public

ALBERT C. HOLUMZER
Notary Public, State of New York
Qualified in Ulster County
Commission Expires March 30, 19 77

Original: Clerk of Court-PRO-SE-
225 Cadman Plaza, East
Brooklyn, New York,
11201

C.C. : United States Attorney's Office
225 Cadman Plaza, East,
Brooklyn, New York,
11201

% United States District Court
Eastern District of New York.

bothering you more than any --

THE COURT: No.

MR. SCOTTO: I just -- I will go along.

MR. LEVIN-EPSTEIN: I stipulate that the merits are basically merits of credibility.

THE COURT: The Court fully recognizes the testimony of the three attorneys, Mr. Corbett, Mr. Scheinberg and Mr. O'Brien, and finds that there was no discussion of an appeal outside the pen following the sentences of the three defendants. There was a discussion of, apparently, as indicated by the three attorneys, of a motion for reduction under Rule 35. It also appears clear that the defendants, at least two of the defendants, Collins and Flammia, had in mind the fact that they might appeal because they wrote their counsel to such effect prior to the sentencing. Namely, Messrs. Flammia and Collins and the fact they didn't raise that question with them and press that question with them. Given those circumstances, I think this is of their own doing and not of their counsel. Under the circumstances, both your petitions are denied and the decision will stand. It is the judgment of the Court.

MR. LANDSMAN: Before you leave the bench, could we have an order directing the furnishing of the minutes